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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 FORTINET, INC., a corporation,

13 Plaintiff,

14 vs.

15 SOPHOS, INC., a corporation, and
16 MICHAEL VALENTINE, an individual,

17 Defendants.

Case No. 5:13-cv-05831

**COMPLAINT FOR
PATENT INFRINGEMENT,
BREACH OF CONTRACT, AND
INTENTIONAL INTERFERENCE
WITH CONTRACT**

DEMAND FOR JURY TRIAL

1 Plaintiff Fortinet, Inc. (“Fortinet”) hereby alleges for its Complaint against Defendants
2 Sophos, Inc. (“Sophos”) and Michael Valentine (“Valentine”) on personal knowledge as to its own
3 actions and on information and belief as to the actions of Sophos, Valentine, and third parties as
4 follows:

5 **INTRODUCTION**

6 1. Fortinet brings this action against Sophos and Valentine to seek remedies for the
7 repeated and ongoing violations—by Sophos and Valentine—of Fortinet’s legal rights. This
8 includes Sophos’ infringement of United States Patent Nos. 7,698,744, 8,069,487, and 8,195,938
9 (collectively, the “Asserted Patents”). This also includes the wrongful conduct of Sophos and
10 Valentine with respect to Fortinet’s contractual and common-law entitlements.

11 **PARTIES**

12 2. Fortinet is a Delaware corporation with a principal place of business at 1090 Kifer
13 Road, Sunnyvale, California 94086. Fortinet is a leading provider of network security appliances
14 and services, and a market leader in unified threat management systems.

15 3. Defendant Sophos is a Massachusetts corporation having its principal place of
16 business in the United States at 3 Van de Graaff Drive, Second Floor, Burlington, Massachusetts
17 01803.

18 4. Defendant Valentine is an individual who was previously employed by Fortinet,
19 and is now employed by Sophos as the “Senior Vice President, Worldwide Sales” of Sophos, as
20 alleged in greater detail below. Valentine lives and works in this District. On information and
21 belief, Valentine maintains his primary residence in Los Gatos, California.

22 **JURISDICTION AND VENUE**

23 5. This is an action for patent infringement arising in part under the patent laws of the
24 United States, codified at 35 U.S.C. §§ 1, *et seq.* This Court has subject matter jurisdiction over
25 this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

26 6. This Court has supplemental jurisdiction over Fortinet’s state law claims pursuant
27 to 28 U.S.C. § 1367. The federal and state claims alleged herein are so related that they form part
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1 of the same case or controversy. Judicial economy, convenience, and fairness to the parties will
2 result if this Court asserts jurisdiction over the state claims.

3 7. This Court has personal jurisdiction over Sophos. On information and belief,
4 Sophos has transacted business in this District, contracted to supply goods or services in this
5 District directly or through its agents, has offered for sale, sold and/or advertised its products and
6 services in the this District, and has otherwise purposely availed itself of the privileges and
7 benefits of the laws of the State of California. In addition, this Court has jurisdiction over Sophos
8 because Sophos has committed acts of patent infringement during the course of its business in this
9 District. In addition, as alleged below, Sophos currently employees 1+ individuals in this District
10 and is therefore physically present here, has poached 1+ individuals in this District from the
11 employment of Fortinet, and has induced 1+ individuals in this District to breach contractual
12 agreement(s) with Fortinet. Furthermore, Sophos maintains systematic, ongoing business
13 operations inside this District, including a physical presence inside this District. By way of
14 example, Sophos currently lists numerous job openings inside this District on its own web site,
15 including an opening for a “Channel Manager – West Coast” with a “Location” defined as “Santa
16 Clara, California.” Sophos is currently advertising a job opening for an “Enterprise Account
17 Executive – Northern California” with a “Location” defined as “San Francisco, California.”
18 Sophos is currently advertising a job opening for an “Office Administrator” with a “Location”
19 defined as “Santa Clara, California,” and with a job description that indicates that Sophos
20 maintains at least one permanent office inside this District, given that the “Main Duties” include
21 “Greeting and directing visitors” and “Issuing visitor badges.” According to the web site for the
22 California Secretary of State, Sophos has a California business entity number, and maintains an
23 agent for service of process inside California.

24 8. This Court has personal jurisdiction over Valentine because he maintains his
25 primary residence in this District.

26 9. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) and 28 U.S.C.
27 § 1391.

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INTRADISTRICT ASSIGNMENT

10. This is an intellectual property action exempt from intradistrict assignment under Civil Local Rule 3-2(c), which makes this action subject to assignment on a district-wide basis.

FACTUAL BACKGROUND

11. Founded in 2000, Fortinet is a leader and worldwide provider of innovative network security appliances and unified threat management solutions. Fortinet’s products and subscription services provide broad, integrated and high-performance protection against security threats while simplifying IT security infrastructures. Fortinet is a pioneer in the creation of Unified Threat Management (“UTM”) security systems, which enable secure business communications. Fortinet’s “Fortigate” systems detect and eliminate the most damaging, content-based threats from email and web traffic without degrading network performance. By integrating the industry’s broadest suite of security protections, Fortigate systems allow Fortinet customers to obtain the most comprehensive UTM solutions. Fortinet is now the world’s leading provider of UTM security systems, with over 20,000 customers worldwide. Fortinet is headquartered in Sunnyvale, California, with customer support, development, and sales facilities located throughout the world.

12. Fortinet has expended substantial resources researching and developing its patented technologies, technical strategies, and business plans related to its security products and services through the expenditure of considerable employee work hours and company resources. This research and development has led to numerous innovative products in the network security market. The United States Patent and Trademark Office has recognized Fortinet’s achievements by awarding numerous patents to Fortinet and its inventors as a result of these innovations.

13. Fortinet has likewise expended substantial resources in recruiting, hiring, training and retaining its personnel.

14. On information and belief, Sophos competes with Fortinet in the network security industry.

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16. Valentine was one of the highest ranking officers and executives at Fortinet. Fortinet maintained a public profile for Valentine on its public web site, identifying Valentine as a key member of Fortinet's "Executive Management."

18. While Valentine served as an officer and senior executive of Fortinet, he was provided substantial compensation by Fortinet.

. . . With more than twenty years of senior sales and channel experience at global IT security companies, Michael most recently served as vice president, Americas sales and support at Fortinet. In this role, *he oversaw all facets of the company's network security offerings—VPN, UTM, web filter, security software—and business development across North America, Latin America and Australia/New Zealand*, helping to increase corporate revenues by nearly 40 percent.

He is a recognized and respected sales executive who in 2008 and 2009 was named a top “Channel Chief” by CRN magazine. . .

1 (See <http://www.sophos.com/en-us/company/management/michael-valentine.aspx>, last visited
2 December 16, 2013, emphasis added.)

3 20. When Valentine began his duties at Fortinet, in exchange for good and valuable
4 consideration, he chose to execute a written agreement (“Agreement”) with Fortinet. Valentine
5 chose to sign the Agreement on May 21, 2007. A copy of the Agreement, signed by Valentine, is
6 attached hereto as ***Exhibit A***.

7 21. In executing the Agreement on May 21, 2007, Valentine agreed to a clause with the
8 title “Solicitation of Employees.” Valentine agreed as follows:

9 I agree that ***for a period of twelve (12) months immediately***
10 ***following the termination of my relationship with the Company*** for
any reason, whether voluntary or involuntary, with or without cause,
11 ***I shall not either directly or indirectly solicit any of the Company’s***
employees to leave their employment, or attempt to solicit
12 employees of the Company, either for myself or for any other person
or entity.

13 (See Exhibit A at ¶ 8, emphasis added.)

14 22. In executing the Agreement on May 21, 2007, Valentine also agreed to a clause
15 with the title “Termination Certification.” Valentine agreed as follows:

16 ***Upon separation from employment with the Company, I agree to***
17 ***immediately sign and deliver to the Company the “Termination***
Certification” attached hereto as Exhibit C. I also agree to keep the
18 Company advised of my home and business address for a period of
three (3) years after termination of my employment with the
19 Company, so that the Company can contact me regarding my
continuing obligations provided by this Agreement.

20 (See Exhibit A at ¶ 6, emphasis added.)

21 23. Valentine chose to leave Fortinet in February 2013.

22 24. When Valentine chose to leave Fortinet in February 2013, he abided by the
23 requirement in the Agreement that he execute a Termination Certification (“Certification”).
24 Valentine signed his Certification on February 25, 2013. A copy of the Certification, signed by
25 Valentine, is attached hereto as ***Exhibit B***.

26 25. In signing the Certification, Valentine confirmed that he was bound by the
27 Agreement. He indicated that he was leaving Fortinet to become the “SVP WW Sales” at
28 “Sophos.” He also reiterated his promise not to solicit any Fortinet employees to leave Fortinet

1 for a period of 12 months following his own termination at Fortinet. From Valentine's
2 Certification:

3 I also agree that for twelve (12) months from this date, I will not
4 directly or indirectly solicit, induce, recruit or encourage any of the
Company's employees to leave their employment

5 After leaving the Company's employment, I would be employed by
6 SOPHOS in the position of: SVP WW Sales.

(See Exhibit B.)

7
8 **Valentine and Sophos Raid Fortinet's Employees**

9 26. Valentine joined Sophos as the "Senior Vice President, Worldwide Sales" in
10 February 2013.

11 27. Valentine and Sophos—together and through the conduct of Valentine, at the
12 intentional direction and/or encouragement and/or request of Sophos—violated Valentine's
13 contractual and other lawful duties to Fortinet by attempting to solicit and induce numerous
14 Fortinet employees to leave Fortinet. On information and belief, this unlawful solicitation
15 occurred both before and after Valentine resigned from Fortinet.

16 28. Valentine's unlawful solicitation activities are evidenced by numerous facts,
17 including—as examples—the following.

18 29. In April 2013—just two months after Valentine left Fortinet for Sophos—
19 numerous important Fortinet employees, including senior executives, in fact departed Fortinet for
20 Sophos at the inducement of Valentine and Sophos.

21 30. Fortinet's *Vice President* of Channel Sales (hereafter, "KK"), left Fortinet for
22 Sophos in April 2013. At Sophos, KK was given the title "Vice President, Channel Sales, North
23 America." KK's "LinkedIn" profile indicates that she conducts business on behalf of Sophos
24 physically based out of the "Greater Chicago Area."

25 31. Fortinet's *Vice President* of Distribution for North America (hereafter, "RG"), also
26 left Fortinet for Sophos in April 2013. At Sophos, RG was given the title "Director of
27 Distribution, North America." RG's "LinkedIn" profile indicates he conducts business on behalf
28 of Sophos physically based out of "Orange County, California."

1 32. A “Distribution Account Manager” at Fortinet (hereafter, “CB”) also left Fortinet
2 for Sophos in April 2013. At Sophos, CB was given the title “Channel Account Executive.” CB’s
3 “LinkedIn” profile indicates that he conducts business on behalf of Sophos physically based out of
4 the “Greater Denver Area.”

5 33. Fortinet’s “Director, Central Region Channel Sales” (hereafter, “DD”) left Fortinet
6 for Sophos in October 2013. At Sophos, DD was given the title “Director of Central Region
7 Channel Sales.” DD’s “LinkedIn” profile indicates that he conducts business on behalf of Sophos
8 physically based out of the “Dallas/Fort Worth Area.”

9 34. Not coincidentally, KK, RG, and CB all resigned from Fortinet—to join Valentine
10 and to accept jobs at Sophos—in the exact same week of April 2013. Those three employees
11 resigned from Fortinet just a few days shy of two months after Valentine left Fortinet.

12 35. Fortinet’s *Vice President* – Systems Engineering (hereafter, “JC”) left Fortinet for
13 Sophos in November 2013. At Sophos, JC was given the title “Director of Sales Engineering.”
14 On information and belief, this followed an in-person meal and/or meeting between JC, Valentine,
15 and KK in approximately August 2013.

16 36. On information and belief, Valentine and Sophos solicited numerous Fortinet
17 employees to leave Fortinet less than 12 months after Valentine left the company. Valentine and
18 Sophos did this to damage Fortinet, to diminish Fortinet’s position in the marketplace, and to
19 unfairly enhance their own positions.

20 37. On information and belief, Valentine and Sophos furthermore induced other former
21 Fortinet employees to violate their Agreement with Fortinet by inducing them to solicit other
22 Fortinet employees to leave the company. KK, RG, CB, and DD all signed an Agreement—just as
23 Valentine did—requiring them as a contractual matter not to solicit other employees to leave
24 Fortinet within 12 months of their employment at Fortinet. And yet, on information and belief,
25 KK, RG, CB, and/or DD have solicited Fortinet employees (including each other) to leave the
26 employment of Fortinet.

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1 43. On information and belief, Sophos induces consumers, including its customers and
2 end-users, to make and use the claimed inventions and to practice the claimed methods by (i)
3 providing Sophos Anti-Virus software and (ii) instructing consumers to use Sophos Anti-Virus
4 software along with, *inter alia*, its anti-virus capabilities and in conjunction with Sophos Cloud
5 and/or SophosLabs such that the combination as intended practices each of the elements of at least
6 claim 8 of the ‘744 patent.

7 44. On information and belief, consumers make and use the claimed inventions and
8 practice the claimed methods by using Sophos products, including but not limited to those
9 identified above, that incorporate Sophos Anti-Virus software along with Sophos Cloud and/or
10 SophosLabs, thereby directly infringing at least claim 8 of the ‘744 patent.

11 45. Sophos also contributes to the infringement of the ‘744 patent because Sophos
12 knows that its products are made for use in an infringing manner and are not staple articles of
13 commerce suitable for substantial non-infringing uses. Sophos’ products, including those
14 enumerated above, which it sells directly to consumers as well as through its distribution partners,
15 are designed to be used (and are used by consumers and end-users) in an infringing manner.
16 Additionally, on information and belief, Sophos’ products, including those identified above, are
17 especially designed, made, or adapted for use in an infringing manner. Sophos’ products have no
18 substantial non-infringing uses and are material to the claimed inventions.

19 46. On information and belief, Sophos’ direct, induced, and/or contributory
20 infringement of the ‘744 patent has caused and continues to cause substantial damage to Fortinet.

21 **COUNT NO. II (Against Sophos)**

22 **INFRINGEMENT OF U.S. PATENT NO. 8,069,487**

23 47. Fortinet realleges and incorporates herein by reference the allegations contained in
24 paragraphs 1–46.

25 48. United States Patent No. 8,069,487 (“the ‘487 patent”), titled “CLOUD-BASED
26 APPLICATION WHITELISTING,” issued on November 29, 2011. A true and correct copy of
27 the ‘487 patent is attached as *Exhibit D* to this Complaint.
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1 49. Fortinet owns all right, title, and interest in and to the ‘487 patent, including all
2 rights to enforce the ‘487 patent.

3 50. On information and belief, without a license or permission from Fortinet, Sophos
4 has infringed and continues to infringe, induced others to infringe and continues to induce others
5 to infringe, and/or has committed and continues to commit acts of contributory infringement,
6 literally or under the doctrine of equivalents, of one or more claims of the ‘487 patent, including at
7 least claim 24 of the ‘487 patent. Sophos’ infringing activities in the United States and in this
8 District include importing, making, using, offering to sell, and/or selling products and devices that
9 embody and/or practice the patented invention, including but not limited to Sophos Anti-Virus
10 software which, on information and belief, is incorporated into, sold with, and/or used with
11 infringing products marketed and/or sold under the names Sophos Enduser Protection Suites,
12 Sophos Endpoint Security and Control, Sophos Endpoint Anti-Virus, Sophos Cloud, among other
13 Sophos products, and contributing to, and inducing consumers and users to make and use the
14 patented invention and to practice the claimed methods.

15 51. Specifically, on information and belief, Sophos induces others, including its
16 customers and end-users, to infringe at least claim 24 of the ‘487 patent by encouraging and
17 facilitating them to perform actions known by Sophos to infringe and with the intent that
18 performance of the actions will infringe. Sophos has been aware of the ‘487 patent since at least
19 the filing of this complaint.

20 52. On information and belief, Sophos induces consumers, including its customers and
21 end-users, to make and use the claimed inventions and to practice the claimed methods by (i)
22 providing Sophos Anti-Virus software and (ii) instructing consumers to use Sophos Anti-Virus
23 software along with, *inter alia*, its anti-virus capabilities and in conjunction with Sophos Cloud
24 and/or SophosLabs such that the combination as intended practices each of the elements of at least
25 claim 24 of the ‘487 patent.

26 53. On information and belief, consumers make and use the claimed inventions and
27 practice the claimed methods by using Sophos products, including but not limited to those
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1 identified above, that incorporate Sophos Anti-Virus software along with Sophos Cloud and/or
2 SophosLabs, thereby directly infringing at least claim 24 of the ‘487 patent.

3 54. Sophos also contributes to the infringement of the ‘487 patent because Sophos
4 knows that its products are made for use in an infringing manner and are not staple articles of
5 commerce suitable for substantial non-infringing uses. Sophos’ products, including those
6 enumerated above, which it sells directly to consumers as well as through its distribution partners,
7 are designed to be used (and are used by consumers and end-users) in an infringing manner.
8 Additionally, on information and belief, Sophos’ products, including those identified above, are
9 especially designed, made, or adapted for use in an infringing manner. Sophos’ products have no
10 substantial non-infringing uses and are material to the claimed inventions.

11 55. On information and belief, Sophos’ direct, induced and/or contributory
12 infringement of the ‘487 patent has caused and continues to cause substantial damage to Fortinet.

13 **COUNT NO. III (Against Sophos)**

14 **INFRINGEMENT OF U.S. PATENT NO. 8,195,938**

15 56. Fortinet realleges and incorporates herein by reference the allegations contained in
16 paragraphs 1–55.

17 57. United States Patent No. 8,195,938 (“the ‘938 patent”), titled “CLOUD-BASED
18 APPLICATION WHITELISTING,” issued on June 5, 2012. A true and correct copy of the ‘938
19 patent is attached as *Exhibit E* to this Complaint.

20 58. Fortinet owns all right, title, and interest in and to the ‘938 patent, including all
21 rights to enforce the ‘938 patent.

22 59. On information and belief, without a license or permission from Fortinet, Sophos
23 has infringed and continues to infringe, induced others to infringe and continues to induce others
24 to infringe, and/or has committed and continues to commit acts of contributory infringement,
25 literally or under the doctrine of equivalents, of one or more claims of the ‘938 patent, including at
26 least claim 30 of the ‘938 patent. Sophos’ infringing activities in the United States and in this
27 District include importing, making, using, offering to sell, and/or selling products and devices that
28 embody and/or practice the patented invention, including but not limited to Sophos Anti-Virus

1 software which, on information and belief, is incorporated into, sold with, and/or used with
2 infringing products marketed and/or sold under the names Sophos Enduser Protection Suites,
3 Sophos Endpoint Security and Control, Sophos Endpoint Anti-Virus, Sophos Cloud, among other
4 Sophos products, and contributing to, and inducing consumers and users to make and use the
5 patented invention and to practice the claimed methods.

6 60. Specifically, on information and belief, Sophos induces others, including its
7 customers and end-users, to infringe at least claim 30 of the '938 patent by encouraging and
8 facilitating them to perform actions known by Sophos to infringe and with the intent that
9 performance of the actions will infringe. Sophos has been aware of the '938 patent since at least
10 the filing of this complaint.

11 61. On information and belief, Sophos induces consumers, including its customers and
12 end-users, to make and use the claimed inventions and to practice the claimed methods by (i)
13 providing Sophos Anti-Virus software and (ii) instructing consumers to use Sophos Anti-Virus
14 software along with, *inter alia*, its anti-virus capabilities and in conjunction with Sophos Cloud
15 and/or SophosLabs such that the combination as intended practices each of the elements of at least
16 claim 30 of the '938 patent.

17 62. On information and belief, consumers make and use the claimed inventions and
18 practice the claimed methods by using Sophos products, including but not limited to those
19 identified above, that incorporate Sophos Anti-Virus software along with Sophos Cloud and/or
20 SophosLabs, thereby directly infringing at least claim 30 of the '938 patent.

21 63. Sophos also contributes to the infringement of the '938 patent because Sophos
22 knows that its products are made for use in an infringing manner and are not staple articles of
23 commerce suitable for substantial non-infringing uses. Sophos' products, including those
24 enumerated above, which it sells directly to consumers as well as through its distribution partners,
25 are designed to be used (and are used by consumers and end-users) in an infringing manner.
26 Additionally, on information and belief, Sophos' products, including those identified above, are
27 especially designed, made, or adapted for use in an infringing manner. Sophos' products have no
28 substantial non-infringing uses and are material to the claimed inventions.

1 64. On information and belief, Sophos' direct, induced, and/or contributory
2 infringement of the '938 patent has caused and continues to cause substantial damage to Fortinet.

3 **COUNT NO. IV (Against Valentine)**

4 **BREACH OF CONTRACT**

5 65. Fortinet realleges and incorporates herein by reference the allegations contained in
6 paragraphs 1–64.

7 66. Fortinet and Valentine entered into a contract, described herein as the Agreement.

8 67. Fortinet did all, or substantially all, of the significant things that the Agreement
9 required it to do, and/or that Fortinet was excused from doing those things based on Valentine's
10 breaches of the Agreement.

11 68. All conditions required by the Agreement for Valentine's performance occurred
12 and/or were excused.

13 69. Valentine breached the Agreement by soliciting, directly and indirectly, and
14 attempting to solicit numerous Fortinet employees to leave Fortinet within 12 months of less of
15 Valentine's termination from Fortinet.

16 70. Fortinet was harmed by this breach in an amount to be proven at trial.

17 71. Fortinet has been and will be harmed irreparably as a result of Valentine's
18 continued violations of the Agreement, unless that conduct is enjoined by this Court.

19 **COUNT NO. V (Against Sophos & Valentine)**

20 **INTENTIONAL INTERFERENCE WITH CONTRACT**

21 72. Fortinet realleges and incorporates herein by reference the allegations contained in
22 paragraphs 1–71.

23 73. Fortinet entered into the Agreement—a valid contract—with Valentine, pursuant to
24 which Valentine agreed not to solicit Fortinet employees to leave Fortinet during a reasonable
25 period of time. Likewise, KK, RG, CB, and DD all signed the Agreement with Fortinet or a
26 document substantially identical to the Agreement.

27 74. Upon information and belief, Sophos became aware of Valentine's Agreement no
28 later than Valentine's decision to accept an offer of employment from Sophos, in or before

1 February 2013. Sophos likewise became aware of the Agreement between Fortinet and KK, RG,
2 CB, and DD at the same time.

3 75. Valentine was aware of the Agreement between Fortinet and KK, RG, CB, and DD
4 well before 2013.

5 76. Upon information and belief, Sophos intentionally induced Valentine to breach the
6 Agreement by inducing him to solicit Fortinet employees to leave Fortinet, including KK, RG,
7 CB, DD, and/or JC, both before and shortly after (and less than 12 months from the date that)
8 Valentine terminated his employment with Fortinet.

9 77. Upon information and belief, both Sophos and Valentine intentionally induced
10 numerous individuals to breach their Agreement with Fortinet—including KK, RG, CB, DD,
11 and/or JC—by inducing them to solicit Fortinet employees to leave Fortinet shortly after (and less
12 than 12 months from the date that) those employees terminated their employment with Fortinet.

13 78. Upon information and belief, Sophos induced Valentine to breach the Agreement
14 by inducing him to solicit Fortinet employees to leave Fortinet, including while those employees
15 were still employed by Fortinet.

16 79. Upon information and belief, Sophos and Valentine induced numerous former
17 Fortinet employees—including KK, RG, CB, DD and/or JC—to breach the Agreement by
18 inducing them to solicit Fortinet employees to leave Fortinet, including while those employees
19 were still employed by Fortinet.

20 80. Sophos engaged in wrongful conduct by intentionally disrupting Valentine's
21 performance of, and by inducing his breaches of, the Agreement.

22 81. Sophos and Valentine engaged in wrongful conduct by intentionally disrupting the
23 performance of, and by inducing breaches of, the Agreement between Fortinet and numerous
24 former Fortinet employees.

25 82. The actions of Sophos and Valentine identified in this pleading were done with the
26 intention of disrupting the contractual relationships between Fortinet and Valentine, and between
27 Fortinet and numerous other Fortinet employees.

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1 83. The actions of Sophos and Valentine identified in this complaint resulted in
2 numerous breaches of the Agreement by Valentine and other former Fortinet employees.

3 84. As an actual and proximate result of Sophos' and Valentine's conduct, Fortinet has
4 been damaged in the amount to be proven at trial.

5 85. Sophos' and Valentine's conduct was a substantial factor in causing Fortinet's
6 harm.

7 86. In performing the acts described above, Sophos and Valentine acted willfully,
8 maliciously, oppressively, with the intent to interfere with Fortinet's contractual interests and with
9 conscious disregard for Fortinet's rights and the damages it would suffer thereby.

10 **DEMAND FOR JURY TRIAL**

11 87. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Fortinet demands a
12 jury trial on all triable issues.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Fortinet prays for judgment and relief as follows:

15 A. A declaration that the Asserted Patents are valid and enforceable, and that Sophos
16 has infringed and continues to infringe one or more claims of the Asserted Patents;

17 B. A preliminary and/or permanent injunction enjoining Sophos, its directors, officers,
18 agents, and employees, and those acting in privity or in concert with them, and their partners,
19 subsidiaries, divisions, successors, and assigns, from further acts of (i) interference with Fortinet
20 contractual benefits, and (ii) infringement, contributory infringement, or inducement of
21 infringement of the Asserted Patents;

22 C. An award of damages adequate to compensate Fortinet for Sophos' infringement,
23 in accordance with 35 U.S.C. § 284, including all pre-judgment and post-judgment interest and
24 costs;

25 D. Increasing the damages to three times the amount found or assessed by virtue of the
26 deliberate and willful nature of Sophos' infringement, in accordance with 35 U.S.C. § 284;

27 E. A judgment that this is an exceptional case and that Fortinet be awarded attorneys'
28 fees under 35 U.S.C. § 285;

1 F. A judgment that Fortinet be awarded damages as a result of Sophos' intentional
2 interference with Fortinet's contracts;

3 G. A judgment that Fortinet be awarded damages as a result of Valentine's intentional
4 interference with Fortinet's contracts;

5 H. A judgment that Fortinet be awarded damages as a result of Valentine's breach of
6 contract;

7 I. A judgment that Fortinet be awarded pre-judgment and post-judgment interest on
8 any award; and

9 J. That the Court award Fortinet any other relief as the Court deems just and proper.
10

11 Dated: December 16, 2013

Respectfully submitted,

12 By: /s/John M. Neukom
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